IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11278 of 2001

with

SPECIAL CIVIL APPLICATION No 12531 of 2003

Date of Decision: 24-06-2004

UNION OF INDIA

Versus

GULAM MOHMED GHANCHI

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioner Mr Anant S

For the Respondents Mr.Anand L.Sharma

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Both these petitions, (Union of India & others Vs. Gulam Mohmad Ghanchi (S.C.A.No.11278/01) and Union of India & others Vs. Arvindbhai M. Patel (S.C.A. No.12531/03)), are decided by this common judgment, since ultimate question for determination is common. However, before adverting to the same, brief facts of each case are being given separately.

Whether Reporters of Local Papers may be allowed to see the Judgment?

2. S.C.A.No.11278/01-Gulam Mohmad Ghanchi:

Respondent-Gulam Mohmad Ghanchi was serving as Extra Departmental Branch Post Master (EDBPM), Dabhasa, Taluka Padra. He was put off duty (suspension) on 31-08-1991. Thereafter, he was chargesheeted on 11-02-1992 on the charges that he received one registered letter no.856 for delivery to the Branch Manager of the Central Bank of India, but did not deliver the same to the Branch Manager, and instead delivered the same to somebody else, resulting in misappropriation of some amount, and that he received a registered letter dated 15-07-1991 for delivery to the Central Bank of India, duly entered at Sr.No.3 and 4 in B.O. slip dated 16-07-1991, but was not delivered to EDA Dabhasa for delivery and given to another person, and the address receipt was not kept with B.O. slip dated 26-07-1991. Enquiry was conducted against him and held guilty of the charges, therefore removed from service. After putting him off duty from 31-08-1991, no subsistence allowance was paid to him. Appeal against the order was rejected by the appellate authority, therefore, action was challenged before the Central Administrative Tribunal, Ahmedabad Bench (CAT). In the Criminal Case No.138/P/1999 (C.R.No.624/91) (Old Case No.154/P/1995) filed for the same charges, the respondent stood acquitted by judgment dated 31-03-2001 of Addl. Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai.

3. S.C.A.No.12531/03-Arvindbhai M.Patel:

Arvindbhai M.Patel was working as Extra-Departmental Branch Post Master (EDBPM) Oz (Bhalod SO). He was charge-sheeted on 15-02-1996 for imputations that he failed to maintain devotion to duty, engaged in forgery of signatures of the depositors, etc. Enquiry was conducted. However, Enquiry Officer reported that all the charges were not proved. The disciplinary authority disagreed with the findings of the Enquiry Officer, and issued notice to the respondent inviting his representation against proposed penalty to be imposed on him. Accordingly, respondent submitted his reply. Thereafter, penalty of removal from service was inflicted on him. He was put off duty (suspension) from 23-11-1995 prior to service of charge sheet and as per order dated 23-11-1995, no subsistence allowance was paid to him during the pendency of the inquiry. The respondent challenged the order before the CAT.

4. The common grievance advanced by the respondents is that during the course of inquiry they were not paid subsistence allowance, therefore, they could not defend themselves in the inquiry proceedings, and consequently, there is failure of principles of natural justice, and on this count, inquiry proceedings stand vitiated. CAT placed reliance on Apex Court decisions in Peter D' Jada & another Vs. Superintendent of Post Offices Udupi & others ((1989) ATC 225), Fakirbhai Fulabhai Solanki Vs. The Presiding Officer & another (1986 LLJ 124), Ram Lakhan etc. Vs. Presiding Officer & others (2000 (2) Scale 9), State of Maharashtra Vs. Chanderbhan (AIR 1983 SC 803), Capt.M.Paul Anthony Vs. Bharat Gold Mines Limited & another (AIR 1999 SC 1416) and O.P. Gupta Vs. Union of India (1987 4 SCC 328), and came to the conclusion that non-payment of subsistence allowance during the pendency of domestic inquiry amounts to violation of principles of natural justice, therefore, enquiry proceedings stand vitiated, and consequently respondents has been directed to be reinstated with immediate effect in the same post. It was further directed that lump sum compensation be paid in four months from the date of order, and failure will entail running interest @ 12% per annum in the case of Arvindbhai M.Patel, and in the case of Shri Gulam Mohmad Ghanchi, direction is for reinstatement and payment of Rs.5000/- etc. etc.

5. Shri Anant S.Dave, learned Additional Standing Counsel for the petitioners, contended that the judgments of CAT are liable to be set aside, since it did not consider that respondents did not raise the objection as to non-payment of subsistence allowance during enquiry proceedings, in which they participated regularly and in the absence of prejudice being shown, inquiry proceedings cannot be quashed. Reference is made to the Apex Court decision in Indra Bhanu Gaur Vs. Committee, Management of M.M.Degree College & others (2003 Lab IC 3844). We have earlier referred to the decisions of the Apex Court referred by the CAT in its judgments in our decision dated 18-06-2004 in Chief Post Master General Vs.Rameshbhai L.Parmar (S.C.A.No.5080/04) with regard to the contention raised by Shri Anant S. Dave, besides State of Punjab and others vs. K.K.Sharma (2003 AIR SCW 2792). The fact remains that the respondents have not been paid subsistence allowance. Question is whether the respondents should raise this objection or the petitioners are duty bound to extend the benefit to the respondents. Where statute provides for payment of subsistence allowance, competent authority is duty bound to pay subsistence allowance. Even in absence of such a

provision, the delinquent must be paid monthly salary he is entitled to from time to time, the reason being that suspension does not put an end to his service under the Government, he continues to be member of the service and master servant relationship continues. What is suspended by termination is that the delinquent is asked not to work. With this relationship, he is entitled to the salary because situation of suspension is brought about by the employer. The delinquent and his family have to subsist, defend the case against him and engage experts to help him. All these require substantial funds. Where from they will come? Therefore, by denial of pay or subsistence allowance/compensation amount, he is bound to suffer enormously with regard to his existence and cannot defend himself in the enquiry. The prejudice to the delinquent is writ large, therefore, obvious. The Apex Court has elevated the right to subsistence allowance to the level of right to live under Article 21 of the Constitution of India, therefore, non-payment thereof amounts to violation of this right. It is profitable to refer to Captan M.Paul Anthony case (supra)(paragraph 29):

"Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rate where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of "Subsistence Allowance", so that the employee may sustain himself. This Court in O.P.Gupta v. Union of India, (1987) 4 SCC 328: (AIR 1987 SC 2257) made the following observations with regard to Subsistence Allowance (para 15 of AIR):

"An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India (AIR 1958 SC 300) is that he continues to be a member of

> the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. The very expression "subsistence allowance" has the undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter Oxford English Dictionary, Vol. II at p.2171 is "to remain alive as on food; to continue to exist". "Subsistence" means means of supporting life, especially a minimum livelihood". (Emphasis supplied)"

Division Bench of this Court in Special Civil Application No.11693 of 2002 - Union of India vs. Ishwarbhai R. Patel, held that where subsistence allowance is not paid during suspension, prejudice to delinquent is obvious."

6. Turning to the facts, apart from our conclusion that prejudice to employees is obvious on account of non-payment of subsistence allowance during the course of inquiry proceedings, respondents have stated before the CAT that they claimed subsistence allowance, which was not paid.

7. Consequently, the defence suffered, therefore, proceedings are liable to be quashed for violation of principles of natural justice. We have no doubt in our mind, for the reasons referred to hereinabove, that respondents have suffered defence for non-payment of subsistence allowance/compensation/monthly salary. They could not defend themselves properly, they and their families suffered with regard to their subsistence and defence. Therefore, what emerges out of the aforesaid discussion is that CAT has examined the matter quite seriously and comprehensively before allowing the claims. We find no justification to take a different view in the matters.

Consequently, we find no merit in these Petitions and the same are dismissed. The petitioners are directed to implement the CAT judgments within four weeks from the date of receipt of this judgment. Rule in each matter is discharged. Interim relief granted earlier shall stand vacated.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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